U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-L-

DATE: APR. 24, 2019

APPEAL ON NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a research scientist in public health, seeks classification as an individual of extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that she meets at least three of the ten criteria.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is a research scientist and principal statistician at the [redacted] Because she has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met only two of the initial evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner served as a peer reviewer of manuscripts for journals. In addition, she authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner maintains that she meets an additional criterion, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they have been of major significance in the field.[1] For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. Here, we will address the Petitioner's arguments on appeal and determine whether she has shown original contributions of major significance in the field consistent with this regulatory criterion.

The Petitioner contends that she "developed a completely new evaluation plan for assessing the effectiveness and the impacts of policies regarding the restriction of menthol and flavored tobacco products, in addition to applying this framework to make important findings particularly regarding the impacts on tobacco use among vulnerable groups." The Petitioner provides an "Evaluation Plan" from the [redacted] for [redacted] In addition, the Petitioner references previously submitted letters from [redacted] and [redacted]

Although [redacted] indicated that the Petitioner "designed the evaluation plan of this campaign, which provided guidelines about how to evaluate the effectiveness and impact of this statewide intervention," [redacted] and [redacted] did not specifically mention the "Evaluation Plan." In fact, the Petitioner cites to their letters relating to her research on marijuana use. The Petitioner did not demonstrate, nor do their letters reflect, that [redacted] and [redacted] discussed her contributions regarding [redacted] tobacco evaluation plan.[2]

Moreover, while the Director found that the evaluation plan, which she submitted in response to the request for evidence (RFE), occurred after the filing of the petition, the Petitioner argues that the plan "was first established in 2015" and "can be used as evidence of an original contribution of major significance."[3] According to [redacted] the Petitioner commenced employment with [redacted] in January 2016, after the establishment of the "Evaluation Plan." Furthermore, at the initial filing of the petition, the Petitioner submitted her curriculum vitae where she generally indicated that she "[m]anag[ed] the evaluation of statewide tobacco control interventions" but did not mention the "Evaluation Plan." However, in response to the RFE, the Petitioner presented an updated curriculum vitae reflecting that she "[d]evelop[ed] the evaluation plan and conduct[ed] the evaluation of: . . . [redacted] [emphasis added]."

---

[1] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

[2] A review of the "Evaluation Plan" reflects a study on menthol cigarettes and flavored tobacco products without any reference to marijuana use.

[3] The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Although the record shows that the "Evaluation Plan" was initiated by before her employment, the record does reflect that she contributed to it at some point. However, the Petitioner did not demonstrate when the results were finalized, released, or implemented to show that any benefits or outcomes occurred prior to the filing of the petition.[4] In fact, the record contains a letter submitted at initial filing from chief of , who indicated that the Petitioner "designed the evaluation of this campaign" and "[t]he evaluation results *will* [emphasis added] facilitate the adoption of more jurisdictions and policies that restrict menthol and flavored tobacco products, and *will* [emphasis added] also allow to chart successes." Here, speculates on the potential influence and on the possibility of being impactful without establishing how the plan already qualified as contribution of major significance in the field.

Similarly, stated that as of July 2018, 18 jurisdictions in California have adopted policies that restrict menthol and flavored tobacco products, and the evaluation results "are being considered by [four] other states for planning their further campaign intervention design." Again, the Petitioner did not demonstrate that letter showed her eligibility at time of filing. Moreover, while indicated the number of jurisdictions in California who have adopted policies, the Petitioner did not establish the impact of the plan on the overall field.[5] Further, did not provide specific, detailed information demonstrating that the field recognized her plan as being majorly significant beyond some jurisdictions adopting unidentified policies in California and possible interest from other states.[6] For example, did not articulate what actions the jurisdictions implemented as a result from the plan and how they reduced tobacco use.

In addition, the Petitioner argues that the "Evaluation Plan" was "supported by federal funding under the Centers for Disease Control and Prevention's National State-Based Tobacco Control Program." Receiving funding to conduct research is not a contribution of major significance in-and-of-itself. Rather, the Petitioner must establish that receiving grants or other similar funding are reflective of her past works' major significance, or that her work conducted with the funding resulted in contributions of major significance. Here, while the Petitioner's "Evaluation Plan" was federally funded, she did not demonstrate that her plan caused a major, significant contribution. In addition, she did not show how the federal funding reflected the importance of her contributions to the overall field.

Again, this criterion requires the Petitioner to establish that she has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to identify her original contributions and explain why they are of major significance to the field. The Petitioner submits her updated citation history from *Google Scholar* reflecting that her six articles received 31, 25, 19, 12, 11, 5 citations, respectively. In addition, the Petitioner contends that her articles appeared in "high-

[4] The "Evaluation Plan" reflects a period covering March 30, 2015 to March 29, 2017.

[5] *See* USCIS Policy Memorandum PM 602-0005.1, *supra,* at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

[6] The Petitioner also offers a screenshot from edu and indicates that she was invited and presented a seminar of her evaluation study at in Georgia. The screenshot does not reflect when the presentation occurred, and the Petitioner did not establish that a one-time seminar demonstrates a majorly significant contribution to the greater field.

profile journal publications." Here, the Petitioner does not articulate the significance or relevance of these numbers. Although her citations are indicative that her research has received some attention from the field, the Petitioner did not demonstrate that her citation numbers to her individual articles represent majorly significant contributions to the field.[7] Generally, citations can serve as an indication that the field has taken interest in a petitioner's work. However, the Petitioner has not sufficiently identified the specific contributions she has made through her written work, nor has she shown that her citations for any of her published articles are commensurate with contributions of major significance. Moreover, a publication that bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, demonstrate an author's influence or impact of research on the field.

In addition, the Petitioner argues that all six of her papers rank between the top .10% and 10% in her field for the respective year of publication and references previously submitted documentation from *InCites Essential Science Indicators* from Thomson Reuters. The comparative ranking to baseline or average citation rates, however, does not automatically establish majorly significant contributions to the field.[8] Once again, the issue for this criterion is whether the Petitioner has made original contributions of major significance in the field rather than where her citation rates rank among others in her field. Here, a more appropriate analysis, for example, would be to compare the Petitioner's citations to other similarly, highly cited articles that the field views as having been of major significance, as well as factoring in other corroborating evidence. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. The Petitioner has not demonstrated, as she asserts, that every article she has authored and published resulted in an original contribution of major significance in the field.

Further, the Petitioner indicates that her work has been cited by other researchers and scientists whose papers have been published in highly ranked journals. However, the citation of the Petitioner's article by another in a highly ranked journal does not automatically demonstrate that her research or article is viewed as a contribution of major significance. Moreover, a review of the sample articles provided by the Petitioner does not show the significance of her research to the overall field beyond the authors who cited to her work. For instance, the Petitioner offered a partial article from *BMC Public Health* that does not distinguish or highlight her written work from the other 73 other cited papers in the article.[9] In the case here, the Petitioner has not shown that her published articles through citations rise to a level of "major significance" consistent with this regulatory criterion.

---

[7] *See* USCIS Policy Memorandum PM 602-0005.1, *supra,* at 8-9 (providing an example that peer-reviewed articles in scholarly journals that have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite the individual's work as authoritative in the field, may be probative of the significance of the person's contributions to the field of endeavor).

[8] For instance, according to the data from *InCites*, clinical medicine papers published in 2016 receiving only one citation were in the top 10% and papers receiving only eight citations were in the top .10%. The Petitioner has not demonstrated that papers with such citation counts have necessarily had a major, significant impact or influence in the field regardless of whether they were among the top .10% or 10% of most highly cited articles according to the year of publication.

[9] Although we discuss a sample article, we have reviewed and considered each one.

Finally, the Petitioner claims that her "work has been highly praised by numerous independent experts in her field and allied fields who not only attest as to its significance but also its impact on their own work." While the recommendation letters summarize the Petitioner's professional accomplishments, they do not explain how her research and written work have been considered by the field to be of major significance. For example, discussed the citation of the Petitioner's paper in his own written work and asserted that it "is sure to benefit the field of severe obesity and bariatric surgery."[10] Here, did not explain how the Petitioner's research has already benefited the overall field of severe obesity and bariatric surgery, as well as how the field views it as a contribution of major significance.

The Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact her research has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[11] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[12] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that she has made original contributions of major significance in the field.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. at 954. Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

---

[10] While we reference a sample letter, we have reviewed and considered each one.

[11] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[12] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. In visa petition proceedings, the petitioner bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of L-L-*, ID# 2814325 (AAO Apr. 24, 2019)